

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th July, 2012

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W.P.(C) 1959/2007

O.S.BAJPAI

..... Petitioner

Through: Petitioner in person with Mr. V.N. Jha & Ms. Manasvini Bajpai, Advs.

Versus

THE ADMINISTRATOR LT.GOVERNOR **..... Respondent**

Through: Mr. A.S. Chandhiok, ASG with Mr. Jatan Singh, Mr. Sandeep Bajaj & Mr. C.S. Parwanda, Advs. for UOI.
Ms. Shobhana Takiar, Adv. for DDA.
Mr. Ajay Arora, Adv. for MCD.
Mr. A. Dhingra with Mr. A. Mehrotra, Advs. for the applicant in CM No.5784/2011.
Mr. S.P. Kamrah, Adv. for the applicant in CM No.10384/2011.

AND

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W.P.(C) 8705/2011

S.C. OBEROI

..... Petitioner

Through: Mr. A.K. Singla, Sr. Adv. with Mr. J.K. Sharma & Mr. Sheetesh Khanna, Advs.

Versus

LAND & DEVELOPMENT OFFICER & ORS. **..... Respondents**

Through: Mr. Rajinder Nischal, Adv. for R-1&2.
Ms. Shobhana Takiar, Adv. for DDA.
Mr. Ajay Arora, Adv. for MCD.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The writ petition, filed in public interest, seeking directions for enforcement of Delhi Apartment Ownership Act, 1986, was disposed of vide judgment dated 28th May, 2010; various infirmities/deficiencies/loopholes in the Act and the limitations of the court in issuing any directions for amendment or replacement of the Act noticed; however an attempt was still made to make the Act workable by giving certain directions for (i) appointment of Competent Authority under the Act; (ii) registration of deeds of apartment and, (iii) formation of Apartment Owners Association. The matter was kept pending to ensure compliance.

2. Though more than two years have since passed and status reports as to implementation of the directions issued have been filed by various agencies from time to time but unfortunately the benefits of the Act have till now not percolated to the apartment owners. Besides the petitioner, several other persons have been appearing before us making grievance in this regard. They state that the Deeds of Apartment are not being executed and registered as yet and owing where to they are unable to beneficially hold, use, enjoy, transfer, mortgage the apartments, the full consideration whereof has been paid by them and for which reason they remain in the clutches of the promoter/builder of the multi-storied buildings containing the apartments.

3. The L&DO and DDA, in their status reports have informed of the appointment by them respectively of Competent Authority under the Act. They however inform that the delay in execution of the Deeds of Apartment is owing to the promoter/builder of the apartments not supplying to them, inspite of requests, the information necessary for drawing up the said deeds. The petitioner and other affected persons rejoin by contending that no cooperation can be expected from the promoter/builder who would not be interested in execution of the Deeds of Apartment and which would take away the promoter's/builder's control over the apartments. Their further grievance is that the Competent Authorities appointed are far too few and which has resulted in the appropriate steps being not taken against the promoter/builder of the apartments.

4. As far as appointment of Competent Authority under the Act is concerned, though Section 3(m) of the Act constitutes a Secretary in the Delhi Administration or the Vice Chairman of the DDA or the Land & Development Officer of the Central Government, who may be authorized by the Administrator by Notification in the Official Gazette, as the Competent Authority under the Act but this court vide order dated 28th May, 2010 supra directed area/building wise appointment of Competent Authority, to enable effective discharge of functions under the Act; it was further directed that the Competent Authority may further authorize as many officers of the rank of Dy. Commissioner or Joint Commissioner as may be necessary for discharge of functions.

5. The Act empowers the Competent Authority to:

- (i) extend the time prescribed under Section 13 of the Act for execution of Deed of Apartment [(See Proviso to Section

13(1)];

- (ii) keep and maintain a record of Deeds of Apartment filed with it [See Section 13(2)];
- (iii) record successions in title to apartment and to decide disputes if any as to succession [See Sections 13(4) & 14(3)]; and,
- (iv) send to the Registrar concerned for registration such changes in succession [See Section 13(5)].

6. The responsibility, under Section 13(1) of the Act, of execution of Deed of Apartment is of the promoter. Promoter is defined in Section 3 (w) of the Act *inter alia* as the person by whom the multi-storied building containing the apartments has been constructed. The Deeds of Apartment are registrable, under Section 14(1) of the Act, under the Registration Act, 1908 i.e. with the Registrar of Assurances and as aforesaid, only a copy thereof is to be filed with the Competent Authority under the Act. Section 13(6) further clarifies that the provisions therein of execution of Deed of Apartment are in addition to and not in derogation of any other law in force relating to transfer of immovable property. Thus the provisions of the Transfer of Property Act, Contract Act and Registration Act etc. apply to transfer of apartments also.

7. This Court, vide order dated 28.05.2010 has directed the promoter/builder to execute the Deeds of Apartment in the proforma as may be approved by the Competent Authority, keeping in view the provisions of Section 13(1) of the Act. It was further directed that where the land underneath the multi-storied building is leasehold, the L&DO on behalf of President of India shall also join as confirming party in the execution of the Deeds of Apartment. The Competent Authority was further directed to give

notice to the promoters / builders directing them to execute the Deeds of Apartment. Failure to comply with such directions was directed to be treated as evasion of necessary stamp duty and registration charges inviting imposition of penalty and action for recovery thereof. It was yet further directed that upon the failure of the promoters / builders to execute and register the Deed of Apartment, the buyer be treated as the owner of the apartment for the purpose of getting the benefits under the Act.

8. Learned Additional Solicitor General appearing for the L&DO has stated that though the Competent Authorities so appointed have repeatedly called upon the promoters / builders including by insertion of public notices in the newspapers, to furnish the details of their own title to the land, description and measurements thereof including the built up areas, common areas and the building plans, sale / transfer consideration etc. but no response is being received. It is further stated that L&DO has substantial claims under the leases of the land underneath the multi-storied buildings and L&DO cannot be forced to transfer title in the apartments in favour of the persons claiming the same without payment of the said dues. It is further stated that under the Policy for freehold conversion of leasehold rights, L&DO is willing to grant freehold rights in the apartments in favour of the apartment owners willing to pay the conversion charges. It is yet further stated that in the absence of promoters / builders, it cannot be known as to whom apartment was allotted / transferred.

9. As far as the contents of the Deed of Apartment are concerned, the Delhi Apartment Ownership Rules, 1987 provide the form of a Deed of Apartment. A perusal thereof shows that the particulars required to be filled therein, though available with the promoters/builders, would also be

available with the apartment buyers and/or with the municipal agencies which have sanctioned the construction. The said particulars *inter alia* comprise of the title of holder of the land underneath the buildings/apartments, the ground area, the total built up area, the number of floors, the number of apartments and sizes thereof. The said particulars are likely to be found in the documents of allotment of apartment and transfer of possession of the apartment and can also be verified from the records of the municipal agencies and of DDA/L&DO who have granted leases of the land underneath. Even if the building plans with the municipal agencies do not show the sizes of the apartments, the Competent Authority can have the same drawn up.

10. Though the Deed of Apartment by the promoter / builder in favour of the first allottee of the apartment as well as endorsement of subsequent transfers of the apartment are to be registered with the Registrar under the Registration Act as aforesaid and the remedy under the prevalent laws of a purchaser of immovable property, as an apartment is, even if in possession, against the seller for non-execution of the Sale Deed is to sue for specific performance but this Court has already vide order dated 28.05.2010 directed that inaction / failure of the promoters / builders in executing and registering the Deed of Apartment would entitle the owner of the apartment to get all the benefits of the Act. However, the question whether the promoter / builder has failed to so execute and register the Deed of Apartment is also to be adjudicated either in a suit for specific performance or in an arbitration, if provided for in the allotment / possession letter of the apartment. The Competent Authority, as aforesaid, under Section 13(4) supra has been empowered to decide the disputes as to succession to the apartment. We are

of the opinion that the dispute whether the promoter / builder has failed in executing and registering the Deed of Apartment would be within the scope of Section 13(4) of the Act and the Competent Authority would be entitled to pass an order directing the promoter / builder to execute the Deed of Apartment and if the Promoter / Builder inspite thereof does not execute the Deed of Apartment, to itself execute and register the Deed of Apartment on behalf of the promoter / builder. Similarly, the disputes if any, as to who, at present is entitled to the apartment, are also to be decided by the Competent Authority.

11. We thus direct that in the event of the apartment owners applying to the Competent Authority, the Competent Authority shall, after granting opportunity of hearing to the promoters / builders and after satisfying itself as to the transfer of apartment to the promoters /builders and possession thereof, pass such orders directing promoters / builders to execute and register the Deed and if the promoters / builders still defaults, execute and register the Deed itself.

12. As far as the claims aforesaid of the land owning agencies as DDA and L&DO are concerned, they cannot seek to recover the entire amount due with respect to the land, only from the apartment owners who approach them for so joining in the Deeds of Apartment. The said claims have to be spread out pro-rata i.e. proportional to the size of the apartment, on each of the apartments. We thus direct that upon any of the apartment owners so approaching the DDA or L&DO, DDA or L&DO as the case may be to within three months intimate pro-rata demand against that particular apartment and upon payment thereof join the promoter / builder or the Competent Authority as the case may be in executing the Deeds of

Apartment. However, if the said claims are disputed by the apartment owners, we are afraid the same cannot be adjudicated neither in these proceedings nor by the Competent Authority and appropriate remedy thereagainst will have to be taken. All that can be observed is that DDA / L&DO ought to take a reasonable stand and explore the possibility of granting rebates etc. as in fact also provided in Section 25 of the Act. We may also mention that the land owning agency shall be entitled to collect the freehold conversion charges only from such of the apartment buyers as are interested in having their share in the leasehold rights in the land underneath so converted and shall not be entitled to impose the same on others whose share in the land underneath shall remain on leasehold basis and subject to the terms of the lease.

13. Else, we are assured that the registering authorities have been directed to register the Deeds of Apartment.

14. The petitioner has also sought a direction for waiver of stamp duty. Though the Central Government under Section 25 of the Act has been empowered to grant such exemption but it is beyond the powers of this Court. No such direction can thus be issued by us.

15. With the aforesaid directions, need is not felt to keep these petitions pending and the same are disposed of.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 13 , 2012

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